THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 5104 of 2006

O r d e r:

Questioning the action of the respondent-Company in not paying the arrears of terminal benefits and arrears of salary pursuant to PRC-1999 for the period from 01.01.1997 to 31.05.1999, the petitioner filed the present writ petition.

The petitioner retired from service of the respondent-Company as Officiating General Manager (Production) on 31.05.1999 on attaining the age of superannuation. He states that the Fifth Pay Revision Commission submitted its report in 1999 recommending increase in pay scales to all the Central Government employees and its Undertakings. According to the petitioner, the said pay revision for Officers of respondent-Company was implemented with effect from 01.01.1997. He further states that at the time of retirement he was paid Gratuity, Provident Fund, Leave Salary as per Pre-revised scales only. As he is entitled to the benefit of the revised pay scales, after retirement he made several representations requesting the respondent-Company to pay him arrears as per the Revised Pay Scales-1999, but the respondent-Company, by letter dated 10.09.2004, informed him that his pay was fixed in the revised pay scales and the differential amounts towards Gratuity, Leave Encashment etc., will be paid as and when the financial position of the Company improved. Thereafter, he filed a petition before the District Legal Services Authority, Visakhapatnam for settlement of arrears, and though the respondent-Company admitted their liability and his entitlement to receive arrears pursuant to revision of pay scales, however since they expressed their difficulty to pay the same due to

financial position, the said petition was closed on 28.01.2006. Subsequently, the petitioner made an application dated 18.02.2006 requesting the respondent-Company to inform the actual amount due to be paid to him as arrears as per the revised pay scales, and the respondent-Company, despite sending a detailed statement, by letter dated 20.02.2006, showing an amount of Rs.3,52,854.39 ps., is payable to him, and even though made payment of arrears to the Officers, who retired from service after January 2007, failed to pay the same to him. Hence, he filed the present writ petition.

A detailed counter affidavit is filed by the Deputy General Manager (Personnel and Administration) of the respondent-Company. Reiterating the counter averments, learned Standing Counsel for the respondent-Company submits that the Ministry of Surface Transport, by letter dated 31.01.2000, informed that the President of India was pleased to approve the Revision of Pay Scales and certain other benefits in respect of Executives holding Board level and below Board level posts in the respondent-Company with effect from 01.01.1997 subject to the conditions contained in DPE's, O.M. No.2(49)/98-DPE(WC), dated 25.06.1999, and further to the conditions that no budgetary support would be provided to the Company by the Government to meet the additional liability of pay revision till 31.12.2006, and the payment of revised salary would be made with effect from 01.01.2000 and the arrears with effect from 01.01.1997 to 31.12.1999 would be made later based on the improvement in the financial performance of the Company. In pursuance of the said communication, the respondent-Company revised the pay scales of the Executives, holding board level and below board level posts, from the month of January 2000, by office order dated 31.01.2000, but since the respondent-Company is earning only Rs.4.00 to Rs.5.00 Crores

per month against the required expenses of Rs.6.00 Crores per month, and has incurred cumulative loss of Rs.1090.47 Crores, Rs.1105.89 Crores, Rs.1103.43 Crores, Rs.1155.46 Crores, and Rs.1163.35 Crores for the years 2000-2001, 2001-2002, 2002-2003, 2003-2004 and 2004-2005 respectively, it is not in a position to pay arrears for the period from 01.01.1997 to 31.12.1999 at this juncture. He further submits that about 133 Officers were discharged from the services of the respondent-Company during the period from 01.01.1997 to 31.12.1999 and there are about 112 Officers above the petitioner, and no officer either in service or retired was paid the arrears of salary for the period from 01.01.1997 to 31.12.1999 and therefore, the petitioner is not entitled to make any claim at this juncture without showing that the respondent-Company is running with good financial position, and the writ petition is liable to be dismissed.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent-Company.

Though the petitioner contends that he is entitled to receive arrears pursuant to revision of pay scales with effect from 01.01.1997, and that the respondent-Company failed to pay the same, in spite of his making several representations, the fact remains that the President of India approved the revision of pay scales in respect of executives holding board level and below board level posts in the respondent-Company with effect from 01.01.1997 subject to the conditions contained in DPE's O.M.No.2(49)/98-DPE(WC), dated 25.06.1999, and further on the condition that the payment of revised salary will be made with effect from 01.01.2000, but the arrears with effect from 01.01.1997 to 31.12.1999 will be made later based on the improvement in the financial performance of the Company, and no budgetary support is provided to the respondent-Company by the

Government to meet the additional liability of pay revision. Pursuant to the said approval, the respondent-Company revised the pay scale of the petitioner and others, by order dated 31.01.2000, but since the financial position of the respondent-Company continues to be critical for the last several years, it is not in a position to pay even salaries to its employees in time and is finding difficult to pool up the money every month for the said purpose. From the counter averments it is also clear that the respondent-Company is earning only Rs.4.00 to Rs.5.00 Crores per month as against the required expenses of Rs.6.00 Crores per month, and thereby, it has incurred cumulative loss of Rs.1090.47 Crores, Rs.1105.89 Crores, Rs.1103.43 Crores, Rs.1155.46 Crores, and Rs.1163.35 Crores for the years 2000-2001, 2001-2002, 2002-2003, 2003-2004 and 2004-2005 respectively. Since the financial position of the company is in doldrums as is evident from the figures placed above, the respondent is not in a position to pay arrears for the period from 01.01.1997 to 31.12.1999 at this juncture, and no exception can be taken thereto.

The next contention of the petitioner is that the Officers, who retired after January 2000 i.e., after the date of implementation of the revised pay scales, were paid their respective retirement benefits based on the revised pay scales, but his claim was ignored by the respondent-Company, and the same is illegal and arbitrary. The contention of the petitioner cannot be accepted, for the reason that the counter filed by the respondent discloses that about 133 Officers were discharged from the services of the respondent-Company during the period from 01.01.1997 to 31.12.1999 and there are about 112 Officers above the petitioner, and no officer either in service or retired was paid the arrears of salary for the period from 01.01.1997 to 31.12.1999 and the non-payment of the said arrears is due to bad financial position of

the respondent-Company and the obligation to pay the same is dependent on the improvement of the financial position as per the Office Order dated 31.01.2000 and also as per the directions of the Ministry of Surface Transport, dated 31.01.2000. Since the entitlement of the petitioner is subject to financial improvement of the company, no exception can be taken to the action of the respondent in not paying the benefits, and more so when it is not the case of the petitioner that the respondent-Company despite making profits, is not making the payment.

The writ petition is devoid of merit and the same is accordingly dismissed. No costs.

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N.V. RAMANA, J.

Dated: 28th September, 2007.
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